

REMARKS

Reconsideration is requested.

Claims 1-44 have been canceled, without prejudice. Claims 45 and 46 have been amended, without prejudice, to advance prosecution and define the elected subject matter. Claims 45 and 46 have been amended to define a region spanning amino acid positions 140-191, as defining the Core region. The start of the E1 region will be recognized by those of ordinary skill in the art and appreciated from the specification as described, for example, in Figure 5 as well as on page 38, second bulleted item (wherein the start of the E1 region is noted as amino acid 192), page 34, line 3, page 39, 4th bulleted item and page 40, 2nd and 3rd bulleted items, of the specification. No new matter has been added.

As the election of SEQ ID NO:20 is understood to be a species election (i.e., "Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable. Currently claims 45 and 46 are generic." See, page 4 of the Office Action dated June 3, 2004.), claim 46 has not been amended above to recite only SEQ ID NO:20 as the claims are believed to be allowable for the reasons described below. The Examiner is requested to contact the undersigned in the event the undersigned has misunderstood the species election requirement.

The Section 101 rejection of claims 45-48 and 53 is obviated by the above amendments. Withdrawal of the Section 102 rejection is requested.

To the extent not obviated by the above amendments, the Section 112, second paragraph, rejection of claims 45-56 is traversed. Reconsideration and withdrawal of the rejection are requested in view of the above and the following comments.

The claims have been amended to indicate that the antibody specifically binds, as opposed to recognizes, without prejudice, to advance prosecution. The claims are submitted to be definite in this regard.

The Examiner's comment regarding SEQ ID NO:20 is not understood and clarification is requested in the event the Examiner maintains the rejection. The Examiner is requested to appreciate that SEQ ID NO:20 is 180 amino acids in length and the region spanning amino acids 140-319 is also 180 amino acids in length. Moreover, the Examiner is requested to see, for example, Figure 5 of the specification wherein the BR36 isolate includes a sequence spanning amino acid positions 140 to 319. The claims are submitted to be definite and withdrawal of the Section 112, second paragraph, rejection of claims 45-56 is requested.

The Section 102 rejection of claims 45-50 and 53 over Bukh (U.S. Patent No. 5,514,539) and the Section 103 rejection of claims 51, 52 and 54-56 over Bukh in view of "Houghten" (U.S. Patent No. 5,350,671), are obviated by the above as Bukh is understood to describe, at best, an E1 sequence. The claims are submitted to be patentable over Bukh alone or in combination with "Houghten". Withdrawal of the Section 102 and Section 103 rejections are requested.

The claims are submitted to be in condition for allowance and a Notice to that effect is requested.

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The Examiner is requested to contact the undersigned in the event anything further is required.

The Examiner is requested to issue a new PTO-892 Form which properly lists the cited U.S. Patent No. 5,350,671, from the Office Action dated December 15, 2004. The PTO-892 Form received with the Office Action lists U.S. Patent No. 5,530,671 which appears to be unrelated to the subject matter of the present application and not the intended patent.

The Examiner is requested to return an initial copy of the PTO-1449 Form filed March 3, 2004, pursuant to MPEP § 609, as requested in the Remarks of the Amendment of March 3, 2004 and the Request of December 30, 2004.

The Examiner is requested to confirm acceptance of the drawings filed July 6, 2001, or otherwise provide a specific objection or rejection of the same.

The Examiner is requested to acknowledge receipt by the Patent Office of the priority documents in grand-parent application Serial No. 08/362,455 from the International Bureau with regard to PCT/EP94/01323, as requested in the Remarks of the Amendment of March 3, 2004 and the Request of December 30, 2004.

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Respectfully submitted,

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By: _____



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